

§ 1023.300

Rule 25 *Respondent*. Counsel may, in accordance with their authority, represent the interest of the Government or other client before the Board. They shall file notices of appearance with the Board, and serve notice on appellant or appellant's attorney.

BOARD DECISION

Rule 26 *Decisions*. Except as allowed under Rule 13, decisions of the Board shall be in writing upon the record as described in Rule 15 and will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be available for public inspection at the offices of the Board.

Rule 27 *Motion for Reconsideration*. (a) Motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be filed within 30 days after receipt of a copy of the Board's decision.

(b) Motions for reconsideration of cases decided under either the Small Claims (Expedited) procedure or the Accelerated procedure need not be decided within the original 120-day or 180-day limit, but shall be processed and decided rapidly.

Rule 28 *Remand from Court*. Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders.

DISMISSALS

Rule 29 *Dismissal Without Prejudice*. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 30 *Dismissal for Failure to Prosecute*. Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate. If no cause, the Board may take such action as it deems reasonable and proper.

10 CFR Ch. X (1-1-05 Edition)

SANCTIONS

Rule 31 *Failure to Obey Board Order*. If any party fails or refuses to obey an order issued by the Board, the Board may issue such orders as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

[44 FR 64270, Nov. 6, 1979. Redesignated at 62 FR 24808, May 7, 1997]

Subpart B [Reserved]

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

AUTHORITY: Sec. 644, Title VI, Pub. L. 95-91, 91 Stat. 599; 5 U.S.C. 504.

SOURCE: 57 FR 53542, Nov. 12, 1992, unless otherwise noted.

GENERAL PROVISIONS

§ 1023.300 Definitions.

For purposes of these procedures:

Agency Counsel means the attorney representing the Department or other agency in a proceeding under this subpart.

Board means the Department of Energy Board of Contract Appeals.

Covered Proceeding means an underlying proceeding as specified by paragraph (a) of § 1023.303.

Days means calendar days.

§ 1023.301 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to covered proceedings. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. These procedures describe the parties eligible for awards and covered Board proceedings. They also explain how to apply for awards and the procedures and standards that the Board will use to make them.

§ 1023.302 When the Act applies.

The Act applies to any covered proceeding pending or commenced before